

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2022] SCSC 154

CR 98/2021

In the matter between:

**THE REPUBLIC**

*(Represented by Mrs. Gulmette Leste)*

**Prosecution**

and

**YOYCE ACHIENG RATTENG**

*(Represented by Ms. Kelly Louise)*

**Accused**

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**Neutral Citation:** *R v Ratteng* (CR 98/21) [2022] SCSC 145 (21<sup>st</sup> February 2022)

**Before:** B. Adeline, J

**Summary:** Importation of controlled drugs, 751.34 grams of Cocaine

**Heard:** 20<sup>th</sup> January 2022 and 7<sup>th</sup> February 2022

**Delivered:** 21<sup>st</sup> February 2022

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**FINAL ORDER**

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Accused charged with a single count of Importation of a controlled drug – 751.34 grams of Cocaine – Accused pleaded guilty at first reasonable opportunity – Accused is sentenced to serve a term of imprisonment of 10 years. Time the accused has spent on remand shall be deducted from the 10 years prison sentence.

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**SENTENCE**

**Adeline, J.**

[1] The accused, one Yoyce, Achieng Ratteng, a self-employed Kenyan national, was charged before this Court with a single count of Importation of a Controlled Drug contrary to Section 5 of the Misuse of Drugs Act, 2016 punishable under Section 5 of the Act read with the Second Schedule of the same Act. The particulars of the offence as per the charge sheet, CB NO 518/21 dated 14<sup>th</sup> October, 2021 reads, as follows;

“Ms. Joyce Achieng Ratteng self-employed from Kenya on the 17<sup>th</sup> September, 2021 at the Seychelles International Airport, imported into Seychelles a controlled drug, namely, 751.34 grams of Cocaine”

- [2] The accused pleaded guilty to the charge at first reasonable opportunity and was accordingly convicted before this court for a single count of Importation of a Controlled drug, cocaine, after she had admitted the facts narrated by the prosecution that led to her arrest and indictment for the offence.
- [3] The facts pertaining to the arrest and indictment of the accused, are that, on the 17<sup>th</sup> September 2021, the accused, a Kenyan national, arrived in Seychelles at the Seychelles International Airport on flight ET 879 from Addis Ababa. As passengers were going through the normal exit procedures, Anti- Narcotic Bureau Officers, ANB, led some passengers through the scanning process. In the process, ANB Officers detected foreign bodies in the stomach of one female passenger who happened to be, and was identified as the accused, holder of passport Number BK 123278. The accused had her luggage searched but nothing illegal was found in her possession from the luggage.
- [4] In an interview that subsequently took place, the accused told ANB Officers, that she is a business woman who is in Seychelles to spend 8 days holiday, and that she would be staying at the Oceanic View Apartment at Belombre. She had in her possession USD one thousand and two hundred and eleven, twelve hundred Kenyan shilling and a visa card.
- [5] In the course of the interview, the accused conceded, that she had swallowed a controlled drug during her stay in a hotel in Addis Ababa where she spent one night.
- [6] The accused agreed to assist ANB Officers to conduct a controlled delivery. She was taken to the hotel she had made reservation and paid for. Whilst at the hotel, the accused did not contact anybody, nor received any phone call or message.
- [7] The following day, the 18<sup>th</sup> September 2021, the accused conveyed herself to the toilet 8 times where she excreted 51 cylindrical shaped bullets in the presence of ANB Officers and counted by ANB Officers. When shown the cylindrical shaped bullets and asked what were they, the accused answered, that they were drugs although she could not say

what type of drugs were they. The cylindrical shaped bullets were seized by ANB Officers and kept as exhibits.

- [8] The accused was arrested for Importation of a Controlled Drug, cautioned and informed of her Constitutional rights.
- [9] On the 19<sup>th</sup> September, 2021 the accused conveyed herself to the toilets three times, and for the 2<sup>nd</sup> consecutive days she excreted a further 13 cylindrical shaped bullets in the presence of ANB Officers. In the evening of the same day, at around 19:49 hours, a “Maya” contacted the accused and they spoke in a language which ANB Officers could not understand. She then received a number of phone calls from her cell phone from a number she had saved as “Maya”, as well as WhatsApp voice calls from a foreign phone number which the accused said was the boss from Addis Ababa who had given the drugs to her to ingest prior to coming to Seychelles who was contacting her.
- [10] On the 21<sup>st</sup> September 2021, there were more incoming telephone calls and communication between the accused and the person whose name she had saved as “Maya”, and the number she had identified as the boss from Addis Ababa. On the 22<sup>nd</sup> September 2021, the controlled delivery operation was called off.
- [11] On the same day, the 22<sup>nd</sup> September 2021, the accused accompanied by ANB Officers, was taken to the Victoria Hospital for a body scan. No more foreign bodies were detected. The accused was then taken to the ANB Station. At the Station, ANB Officers took one of the cylindrical shaped bullet, cut it open and found that it contained substances suspected to be cocaine. At 1450 hours of that day, the accused was arrested by ANB Officers for Importation of a Controlled Drug. The accused was cautioned and informed of her constitutional right in the presence of other ANB Officers. The drugs suspected to be controlled drugs were weighed and found to have an approximate weight of 864 grams.
- [12] The drugs were then sent to the Laboratory, where it was confirmed, to be cocaine, and weighed 751.34 grams. The accused was charged, with Importation of a Controlled Drug. That is, the charge she has pleaded guilty to and has been convicted.

[13] To decide on the right and appropriate sentence that will do justice to this case, I have considered the punitive objective of sentencing in the light of the following factors, balance against each other, notably;

- (i) The circumstances of the accused now convicted of the offence.
- (ii) The nature of the offence including the gravity and extent thereof, at the same time identifying the objective seriousness of the offence.
- (iii) The interest of the community, and
- (iv) The relevant sentencing legislation, guidelines and case law.

[14] At this juncture, I am reminded of *Lawrence & Anor v The Republic* [1990] SLR 47, in which the court indicated, that sentencing must also be directed at addressing the traditional purpose of punishment which are, deterrence, prevention, retribution and rehabilitation. I am inclined to add denunciation to the list. In view of the seriousness of the offence committed, some of these terms must be put in context. That is to say, deterrence in the sense that the sentence to be imposed on the accused, now a convict, should dissuade her as well as others, from committing similar offence. Retribution in the sense that the convict ought to suffer the punishment which she deserves, and denunciation in the sense that this is achieved by the imposition of a sentence the severity of which makes a statement that the offence in question is not to be tolerated by the society we live in.

1. The circumstances of the accused now convicted.

[15] In plea mitigation, learned counsel for the defence submitted, that the accused is a single mother of three children who also looks after her 67 year old sick mother. She had a business which unfortunately closed down in January, 2021 because of the effect of the covid 19 pandemic, and she found herself in dire need of money. Learned counsel also submitted, that it was because of the accused naivety and desperation, that she opted into this activity to get funds she badly needed, and that she has admitted that she chose the wrong option, and that she was wrong in doing so. Learned Counsel further submitted,

that the accused is a first time offender who has pleaded guilty at the first available opportunity, and in doing so, she has shown remorse for what she did, and that she should be given credit for that.

## 2. Nature of the offence including the gravity and extent thereof

[16] It is undeniable fact, that the offence of which the accused has been convicted is very serious. This is borne out of Learned defence counsel's submission in which she acknowledges, that the offence is very serious. Learned defence counsel submitted, that in sentencing the accused, the court should give particular consideration to the fact, that although the amount of drugs imported in this case is said to be excessive, forensic analysis of the drug, although it confirms that the drug is cocaine, fails to confirm the purity of the cocaine. Learned counsel urged the court to consider this, amongst other things, as a mitigating factor to reduce the harshness of the sentence likely to be imposed on the accused.

## 3. The interest of the community

[17] No Sentence, not even a life sentence, can repair the damage which drugs have caused to this country over the last few decades. The damage has been overwhelming and is being felt throughout our society. The suffering which many families have endured and continue to endure has been enormous given that the impacts of drugs have been huge. Had the drugs gone undetected, they would have inflicted further misery on our youths while one or few people would have enriched themselves at their detriment. In *Rep v Micock and Anor* SCSC 322 (4<sup>th</sup> April 2017) the court had this to say;

*“the youth of Seychelles is being poisoned by drugs seemingly readily available, brought in by scrupulous persons. They have no regard for the overwhelming consequences of their acts. Their greed at the expense of the effects of their trade including a lost youth and work force, the toll on Seychelles and the tax payers to treat and rehabilitate drug abusers, the cost of education programmes for the prevention of drugs abuse, and efforts to intercept and prevent the trafficking and importation of drugs and prevent abuse is lost on them. They are oblivious to the pain and havoc they wreck on individual families and the community”*

[18] It follows, therefore, that in these sentencing proceedings, the court has to impose a punishment to reflect public abhorrence for the crime committed, which admittedly, crime of this nature is prevalent in our society today. In *Rep v Rabie* 1975 (4) SA 855 (A), the court said, that:

*“punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances”*

[19] Locals and foreigners alike, should not allow themselves to be misled into the mistaken belief, that this country, known to be a very small jurisdiction, is a soft target for the illegal drugs trade. To the contrary, they must always bear in mind, that the moment they venture into the illegal drugs trade in this country, they effectively step on a minefield at their own peril, and with potentially disastrous long term consequences.

[20] Having said that, the general public should also not be mistaken into thinking, that the court would simply pluck out of the air a sentence without thoroughly consider all the relevant factors to come to a just and fair sentence. The question of imposing a sentence is a matter of discretion to be exercised in consideration of circumstances aggravating and mitigating in the individual cases. The approach, is that a reasonable proportion has to be maintained between the seriousness of the offence or the crime, and the punishment.

#### 4. The relevant sentencing legislation, guidelines and case law.

[21] The maximum penalty which this court can impose on the accused, having been convicted of a single count of importation of a Class A controlled drug, cocaine, is prescribed under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule of the Act. Section 5 reads;

*“A person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule”*

The maximum penalty specified in the Second Schedule of the Misuse of Drugs Act, 2016 is a term of life imprisonment and a fine of up to SCR one million rupees.

- [22] The agreed recommended sentence for the amount of controlled drugs with which the accused has been convicted is a sentence of fifteen years to twenty years for amounts of 400 grams to 600 grams of class A drugs and sentences of eight to twelve years for amounts of 200 grams to 400 grams of class A drugs.
- [23] In plea mitigation, and in further acknowledgment that the accused has been convicted of a very serious offence, learned counsel for the defence, reminded the court of the principles spelt out in Blackstone, Criminal Practice, 2012 with particular emphasis on E1.6, Page 2148, addressing the issue of “Reduction in sentence for a guilty plea”. Learned Counsel submitted, that the accused guilty plea should, in effect, earn her a reduction in sentence as it saved the time of the court and reduced considerable costs, and that an early plea as in the instant case, also saved the inconvenience of the witnesses to give evidence before the court. There can be no disagreement as regards to this sentencing principle.
- [24] Learned Counsel also submitted, that “a reduction in sentence would be in proportion to the sentence to be imposed, calculated by reference to the circumstances in which the guilty plea was taken, in particular, at what stage in the proceedings”. Counsel emphasised, that the accused pleaded guilty at the very early stage of the proceedings, and at the earliest opportunity. Learned Counsel added, that the accused did so to show that she is very “remorseful and repentant”.
- [25] Based on Learned counsel’s submission, in the light of the literatures on sentencing, and the law, there can be no wrong in conceding, that a guilty plea, “taken at first reasonable opportunity”, warrant a reduction in sentencing because of the benefits it brings about as correctly elaborated by Learned defence counsel in her submission. This, together with the accused personal and family circumstances as put before this court, as well as the fact that although the amount of drugs proved to be cocaine is excessive, the failure to ascertain the purity of the drugs means, that the accused should be given some credit.
- [26] I have taken a myriad of competing factors into account in deciding the appropriate sentence that will do justice in this case. I have also taken into account, the key aspects of

learned defence counsel's submission in plea mitigation which are in favour of the accused and I have given her the credit she deserves.

[27] I have had sight of the relevant case law to familiarise myself with the pattern and appropriate sentence in cases of this nature in the light of the recommended sentences. In the case of the *Republic v Jakari Suki, SCSC 142, SR 34/2018*, the accused was convicted for one count of importation of a Controlled Drug heroin (diamorphine) with a net weight of 942.2 grams of illicit heroin and one count of 244.4 grams of cocaine, net weight with purities of 523.7 grams of heroin and 151.4 grams of cocaine. The accused was sentenced to 15 years for count one in respect of the importation of heroin and 8 years on count two in respect of importation of cocaine which sentence were upheld by the court of appeal.

[27] I therefore sentence the accused to serve a term of imprisonment of ten years for the single count of Importation of a Controlled Drug. The time which the accused has spent on remand is to be deducted from the 10 years term of imprisonment. Given that the accused, now convicted and sentenced, is to serve a long term of imprisonment for the offence committed in contravention of the provisions of the Misuse of Drugs Act, 2016, Section 30 (2) (b) of the Prison Act, Cap 180, shall be invoked, in that, she shall not be entitled to remission for good behaviour.

[28] The accused, now a convict who has been sentenced, is informed, that she has thirty days from today to appeal against this sentence.

Signed, dated and delivered at Ile du Port 21<sup>st</sup> February 2022.

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B. ADELINE